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Secretary for
Environmental
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California Regional Water Quality Control Board

Los Angeles Region

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Los Angeles Regional Water Quality Control Board Minutes of October 24, 2002 Regular Board Meeting held at City of Simi Valley Council Chambers 2929 Tapo Canyon Road

INTRODUCTION

The meeting was called to order by Chairperson Diamond at 9:34am.

Board Members Present

Susan Cloke, Francine Diamond, R. Keith McDonald, Bradley Mindlin, H. David Nahai, and Julie Buckner-Levy

Board Members Absent

Robert Miller, Christopher Pak, Timothy Shaheen

Staff Present

Dennis Dickerson, Deborah Smith, David Bacharowski, Ronji Harris, Robert Sams, Jack Price, Phillip Wyels, Steve Cain, Jenny Newman, Jonathon Bishop, Blythe Ponek-Bacharowski, Paula Rasmussen, Kwang-il Lee, Hugh Marley, Michael Lyons, Cassandra Owens, David Hung, Samuel Unger, Thanloan Nguyen, Elizabeth Erickson, Russ Colby, Lala Kabadain, Parvaneh Khayat, Joyce Wang

Others Present

Rex Laird, Ventura County Farm Bureau

John Slayton, Southern California Edison Co.
Richard Hajas, Camrosa Water District
Sam McIntyre, Beverlywood Mutual Water Co.
Jacqy Gamble, Las Virgenes Municipal Water District
Raymond Tremblay, Sanitation Districts of LA County
Jim Colbaugh, Las Virgenes Municipal Water District
Sharon Green, Sanitation Districts of LA County
K. Eric Adair, Gibson, Dunn, & Crutcher

Kimberly Lymon, LA County
Department of Public Works
Denise A. Smith, City of Alhambra
Julie Ann Taylor, Generation Earth
Bill Abbe, CA Attorney General's Office
Mark Pumford, City of Oxnard
Shokoufe Marashi, City of Los Angeles
Matt Bequette, City of Los Angeles
Damon Wing, Ventura CoastKeeper
Don Nelson, City of Thousand Oaks

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California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption
For a list of simple ways to reduce demand and cut your energy costs, see the tips at: <http://www.swrcb.ca.gov/news/echallenge.html>

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Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

Brian Louie, Sanitation Districts of LA County
Robert Westdyke, Camarillo Sanitary District
Reddy Pakala, Ventura County Water District #1
Margaret Nellor, Sanitation Districts LA County
Vicki Conway, Sanitation Districts of LA County
Tim Nanson, City of Simi Valley Public Works

TJ Kim, LA County Department of Public Works
Ann Heil, Sanitation Districts of LA County
Dean Morales, City of Thousand Oaks
David Kimbrough Castaic Lake
Water Agency
Jason Smisko, City of Santa Clarita
Mayor Pro Tem Glen Becerra, City of Simi Valley
Mark Zirbel, City of Thousand Oaks
Laura Magelnicki, City of Simi Valley
Dan Detmer, United Water Conservation District

Steve Bachman, United Water Conservation District

Ashli Desai, LWA
Nicole Granquist, Downey Brand
Steve Shesty, the Boeing Co.
Chris Minton, LWA
Mark Subbotin, Newhall Land Co.
Dene Schulze, LA County Department
of Public Works
Oliver Cramer, City of Santa Clarita
Matthew Freeman, Camulos Ranch
Darrell H. Nelson, Lloyd Butler Ranch
Steven Bachman, United Water
Conservation District
Heather Merenda, City of Santa Clarita
Councilmember Marsha McLean
Jeffrey Lambert, City of Santa Clarita
Leslie Mintz, Heal the Bay
Ron Bottonff, Friends of the Santa
Clara River

Pledge of Allegiance

1. Roll Call

A roll call was taken.

2. Order of Agenda.

The executive officer made the following changes to the agenda:

- *Item 7.1 will be removed from the agenda*

3. Approval of Minutes

The Board approved the minutes from the September 26, 2002 regular meeting.

4. Board Member Communications and Ex Parte Disclosure

Chairperson Diamond reported that she and Board member Cloke attended the opening of the ECIS sewer system. She then reported that she and Board member Buckner-Levy met with Councilmember Gruehl to discuss water quality issues as part of ongoing outreach efforts to the City of LA.



Board member Cloke reported that she attended a LA River Committee meeting to discuss plans for cleanup. She also reported that she attended a Southern California Wetlands Recovery Project meeting and received a partnership award on behalf of the Regional Board.

Board member Buckner-Levy reported that she went on a tour of Hansen Dam and looks forward to working with staff to restore the area if needed.

Board member Nahai reported that he and Chairperson Diamond attended a WSPA conference and addressed different panels to foster cooperation with WSPA.

5 Public Forum

Jim Colbaugh, Las Virgenes Municipal Water District, spoke about the causes and consequences of a sewage spill at Las Virgenes that occurred the previous week. He stated that the flow was contained and that no sewage reached Malibu lagoon or the ocean. He stated that cleanup was completed and that only a 1-mile stretch of the creek below Tapia was affected.

Kimberly Lymon, Los Angeles County sanitation District, presented the Board with an update of the agency's public information and participation program, which is part of their storm water permit requirements.

Yvette Rodan, Generation Earth, spoke about her experiences with the LA County educational program and gave her personal recommendations to improve water quality.

Sam McIntyre, Beverlywood Municipal Water Company, thanked the Regional Board for establishing a working group in Ventura led by staff member Elizabeth Erickson. He stated that the workgroup gives an unbiased view of agricultural resources and their effect on TMDL development.

Leslie Mintz, Heal the Bay, spoke about the spill at Las Virgenes. She stated Heal the Bay volunteers reported the spill and it was not minor. She asked the board to take the spill seriously, as it was the third major incident at Las Virgenes in the last three years.

6. Uncontested Items

There was a motion to approve the following uncontested items: 7.2, 7.3, 8.1-8.4, and 12-14. Board Member McDonald abstained from voting on the consent calendar because of his involvement in 8.2 as President of the Board of Directors of the West Basin Municipal Water District

MOTION: By Board Member Cloke, seconded by Board Member Mindlin, and approved on a voice vote. No votes in opposition.



9. Reconsideration of Administrative Civil Liability against the City of Thousand Oaks

Dennis Dickerson, Executive Officer, presented the Board with background on the ACL, including a review of the 1998 spill, and the legal history of the resulting ACL. He reminded the Board that while Superior Court upheld the liability of the City for the spill, it remanded the penalty to the Board for their reconsideration. He then added to the record, three letters regarding administrative matters between the City and staff.

Bill Abbe, California Office of the Attorney General, explained to the Board that they were directed to reconsider the penalty amount using only the evidence before the board at the time the ACL was originally issued. He emphasized that the Board needed to use section 13385(e) of the Clean Water Code as the criteria. He added that Judge Janvis, who had directed the Board to reconsider the penalty, felt that economic harm to the beach had not been adequately proven in the record.

Phillip Wyels, Staff Counsel, recommended that the Board use the 1998 version of 13385(e) as criteria when reevaluating the penalty.

Eric Eder, Gibson, Dunn, and Crutcher, reviewed the court decision and stated that Judge Janvis felt that the Board had added perceived speculative economic losses when determining the original penalty.

Board member Nahai and Mr. Eder discussed whether the court order required the Board to hold a public meeting.

The Board then began its deliberation of the penalty amount. They reviewed each of the criteria specified in 13385(e).

Regarding the nature and circumstances of the spill, the Board agreed that the 86 million-gallon spill was the largest, most egregious spill they had seen. They discussed how the spill closed 29 miles of beaches for 23 days. They stressed how the gravity of the spill could not be ignored.

Board member Mindlin pointed out that the Board's role was to reconsider the penalty, which could be either a higher or a lower amount than the original penalty.

Regarding the ability of the City to pay, chairperson Diamond stated that by statute, they were empowered to charge the discharger \$10,000 a day plus 10 cents per gallon of sewage spilled. She felt that the maximum penalty was too high.

Board member Nahai added that if the Board considered the impact on ratepayers every time they assessed a penalty, they would never issue ACLs.



Regarding the City's prior history, the Board members agreed that there should be no reduction in that area. They agreed that the City knew that the ruptured line needed to be replaced before the spill occurred.

Board member Mindlin added that there were 10 incidents in the past ten years.

Board Member Cloke agreed that the City had an unacceptable list of violations.

Regarding culpability, the Board members agreed that the City had ample warning of a potential spill and that the discharge was not unpredictable or unavoidable.

Board member Mindlin stated that the City chose to locate the sewer line in a streambed, which should have required the City to show additional care.

Board member Cloke added that there was a record of discussion in front of the City Council of the line's need of repair prior to the spill.

Chairperson Diamond referred to various letters and memos written in advance of the spill that discussed the system's need for upgrades.

Regarding economic benefit by the City, the Board agreed that the City saved money by not completing the needed repairs of the sewer line.

Regarding the staff time, the Board agreed that \$39,000 originally calculated was supportable.

The Board then discussed the exact amount of the penalty they should assess. Board member Nahai led the discussion, as he was the only member present during the assessment of the original penalty. He suggested that the amounts of \$10,000 for 12 days and the \$39,000 for staff time originally assessed stay in place. He then suggested that the Board come up with a price per gallon approximately 2 to 3 cents a day.

Board member Mindlin asked how Board member Nahai arrived at 2 to 3 cents a day. He asked if today's precedent is greater than \$1, what was it when the fine was originally assessed.

Board member Nahai stated that the board had to be careful not to consider precedent in assessing penalties.

Board member Cloke stated that the gravity of the spill was the most important factor but that they must balance out all considerations.

Chairperson Diamond reviewed the Board's discussion and decided that they made it clear that they were not setting a precedent. She felt that 2 to 2.5 cents a gallon was on the right track.



Board member Mindlin reviewed the record of the criteria and stated that he thought 2 to 3 cents was very low, but considering the City's ability to pay, he would favor a motion for that amount.

Phillip Wyels stated that the Board's approach was acceptable and suggested that the price per day and amount assessed for staff time be subsumed into the total price per gallon. He then gave a summary of the Board's comments.

There was a motion for a total fine including all factors of \$2,146,725 or 2.5 cents a gallon.

MOTION: By Board Member Nahai, seconded by Chairperson Diamond, and approved on a voice vote. No votes in opposition.

The Board then discussed the method of payment. Board member Cloke stated that she wanted as much of the penalty as possible to go to environmental projects in the local community. The Board members agreed that 15% of the penalty would be directed to the cleanup and abatement account and that the balance would go towards a supplemental environmental project. The project would be approved by the Board within 120 days with a 30-day extension allowed at the executive officer's discretion. If the SEP was not approved then the penalty would be paid directly into the cleanup and abatement account

MOTION: By Board Member Nahai, seconded by Board Member Cloke, and approved on a voice vote. No votes in opposition.

10. Calleguas Creek Nitrogen TMDL

Glen Becerra, Mayor Pro Tem, City of Simi Valley, thanked the Board for meeting at the City's council chambers when the Board decided on local matters. He spoke in support of the TMDL but expressed concern about the implementation plan.

Jonathon Bishop, Chief, Regional Programs section, gave the staff presentation. He gave background on the nitrogen compounds to be regulated by the TMDL, described the sources of nitrogen compounds, the impacts of the compounds, and the numeric targets. The TMDL sets waste load allocations for ammonia, nitrate, nitrite, and oxidized nitrogen for each POTW discharging to Calleguas Creek and aggregate load allocations for agricultural nonpoint sources. Mr. Bishop then reviewed the implementation plan, which includes studies to address uncertainties in the TMDL. The TMDL requires that the POTWs meet the ammonia target by the effective date of the TMDL and the nitrate, nitrite, and oxidized nitrogen targets four years after the effective date. The nonpoint sources have seven years to meet all targets. There is a reopener at year six to reevaluate the effectiveness of the TMDL on dealing with the algae impairment, based on studies. Mr. Bishop then responded to comments, including a request to include an



ammonia compliance schedule. He stated that staff does not feel an ammonia compliance schedule is warranted because the TMDL targets are less stringent than the requirements that have been in the Basin Plan since 1994. He added that the dischargers had not fully met the requirements of a previous Board Order No. 97-10, which encouraged a watershed approach to the problem.

Laura Magelnicki, City of Simi Valley, was concerned that the ammonia limits would become effective on the date of adoption. She stated that it contradicts Order No. 97-10, which was incorporated into their permit to allow time to conduct a characterization study. She read into the record a letter from staff that indicated that they would allow compliance schedules for ammonia objectives. She felt that the City had acted responsibly and in good faith within the framework of 97-10.

Robert Westdyke, Camarillo Sanitation District, was pleased with the interim limits for nitrate+nitrite but objected to the lack of interim limits for ammonia. He stated that although his agency would meet the limit, the absence of an interim limit would place other agencies in immediate violation.

Leslie Mintz, Heal the Bay, expressed concern that this TMDL would set bad precedent for the upcoming Malibu Creek and LA River TMDLs because it is not protective of aquatic life and only ensures compliance with basin plan objectives. She stated that the limits do not protect against algal blooms and that they only protect MUN and GW beneficial uses. She supports staff's position to exclude a compliance schedule and interim limits for ammonia.

Mark Zurbel, City of Thousand Oaks, spoke in favor of interim limits. He referred to the letter from staff regarding compliance schedules and asked the Board to consider an interpretation of the Basin Plan consistent with prior commitments. He stated that the dischargers had completed studies leading to site-specific objectives for ammonia and were acting to meet with the requirements of 97-10.

Damon Wing, Ventura CoastKeeper, stated that they had received a 319(h) grant for water quality monitoring in Calleguas Creek and looked forward to working with the watershed planning committee. He expressed concern that while the TMDL brings the Creek into compliance with the Basin Plan, there are constituents that will still cause impairments in areas such as Magu Lagoon.

Richard Hajas, Calleguas Creek Water Quality Subcommittee, stated that this TMDL was a milestone for the Calleguas Creek planning effort. He stated that his remaining concerns were with the enforcement of the ammonia limits. He requested the adoption of the TMDL with interim ammonia limits and a compliance schedule.



Board Member Questions

Chairperson Diamond asked what would happen to the cities that were out of compliance on the effective date of the TMDL.

Jon Bishop replied that TMDLs are not self-enforcing and that nothing would happen until the facilities' permits were renewed and the new limits were incorporated into their permits. At that point, the Board could issue a time schedule order.

Board member McDonald asked how many facilities were complying with the current ammonia Basin Plan objectives and how the limits would affect site specific standards. He then asked how many facilities were scheduled for NPDES permit renewals.

Jon Bishop replied that there were two POTWs in the watershed that were able to meet the objectives. He added that there were no limits for ammonia in the existing permits so they currently had no site-specific compliance numbers.

Deborah Smith, Assistant Executive Officer, replied that two permits were scheduled to be renewed this fiscal year.

Board member Cloke asked staff to respond to the difference between the nitrogen Basin Plan objectives for the LA River and Calleguas Creek.

Jon Bishop replied that the standards have three parts and that the nitrogen limit is not based on toxicity while that ammonia limit is. He added that it is unclear if a 40% reduction in nitrogen will impact algal blooms and that is why there is a reopener in six years.

Board member Cloke asked who the members of the watershed subcommittee were, how staff reviews documents submitted, and how facilities would comply with the TMDL.

Jon Bishop replied that the subcommittee was composed of POTWs, water districts, agricultural representatives, and local government members. He stated that staff reviews documents for site-specific objectives and that in general, they are sent out for independent peer review. He added that it would be better to ask the POTWs how they would comply with the TMDL but that in general, nitrification-denitrification would take more time to implement.

Chairperson Diamond asked staff to respond to claims that the limits are not protective of aquatic life.

Jon Bishop replied that there were two issues. The first is that ammonia causes both acute and chronic toxicity and that the ammonia limits clearly protect against this. The second issue is how low dissolved oxygen content in the water



caused by algal blooms is harmful to aquatic life. He stated that if the 40% reduction in Nitrogen did not address this, then staff would reexamine the limit in the reopener.

Board member Nahai asked the City of Simi Valley and the City of Thousand Oaks what measures they were taking to employ nitrification and what the difference was between their plants and others.

John Bishan, City of Simi Valley, replied that the oxidation would require more tanks and blowers and that full nitrification-denitrification was scheduled for June 2003. He stated that he could not speak for other facilities.

Mark Zurnwall, City of Thousand Oaks stated that each of their plants was different but that he expected compliance to take a little longer than 2 years.

Board member McDonald stated that West Basin was able to design and build their nitrification-denitrification process in 19-20 months and that 2 years was not a long time.

Board member Nahai asked what the legal nature of the watershed subcommittee was and what would happen to compliance if the committee dissolved.

Richard Hajas replied that it was not a formal organization with a separate legal existence, but an attempt to bring stakeholders together.

Chairperson Diamond asked staff to address the dischargers' reliance on the interpretation of Resolution 97-10.

Deborah Smith replied that staff was not questioning the spirit of 97-10 by developing this TMDL. She stated that the administrative flexibility to allow compliance schedules that staff thought they had in 1997 is not legally allowable. She added that even if it was, all of the conditions of 97-10 were not fully met by the dischargers. She then reiterated how the limits for ammonia and nitrate+nitrite would be brought into permits.

Board member Cloke asked who would be responsible for implementation of the TMDL, why there were no environmental organizations represented on the watershed subcommittee, and when the committee originated.

Jon Bishop discussed the formation of the subcommittee and outlined who would be responsible for the TMDL implementation. He added that although the subcommittee was not exclusionary, there was not a consistent representation of environmental organizations on the subcommittee.



Board member Nahai asked if the intent of the 1994 ammonia objective in the Basin Plan was for dischargers to meet the objective in eight years or to conduct studies leading to site specific objectives in eight years.

Deborah Smith replied that the intent was for the dischargers to meet the objective in eight years or to conduct studies and meet the site-specific objective in eight years. She stated that the dischargers had not yet conducted any of the studies required for a site specific objective.

Board member Nahai asked how the studies would be conducted if the Watershed subcommittee dissolved.

Jon Bishop replied that first, NPDES permittees are members of the subcommittee and there were enforcement mechanisms available to ensure their compliance with the TMDL. Second, he stated that staff did not envision the subcommittee dissolving because they were working on many TMDLs in the watershed.

The Board and staff discussed the effective date of the ammonia limit and whether or not including compliance schedules would have a real effect on water quality.

The Board took a break to write language regarding tasks required of the dischargers and the watershed subcommittee.

Phil Wyles presented the Board with suggested language to acknowledge the committee's commitment to do certain tasks. The language added that if the tasks were not completed, the Board could decide to amend the implementation plan and adopt a regulatory approach.

Chairperson Diamond moved to adopt the TMDL as proposed with the following changes: 1) add language stating that interim limits for ammonia shall be applicable for no more than two years from today for those POTWs who are not in compliance and may be established at the discretion of the Board when their permits are reissued and 2) add language acknowledging the Watershed Subcommittee and stating if they fail to timely complete required tasks, the Board may amend the implementation plan with a regulatory approach.

MOTION: By Chairperson Diamond, seconded by Board Member Nahai, and approved on a voice vote. No votes in opposition.

11. Santa Clara Chloride TMDL

Jonathon Bishop gave the staff presentation. He reviewed the sources of chloride, the impacts to agricultural uses downstream, the appropriateness of the numeric target, the margin of safety, and the critical condition. The TMDL sets waste load and allocations of



100 mg/L. The two major sources of chloride are the two POTWs operated by County Sanitation Districts of Los Angeles County (CSDLAC). Mr. Bishop then discussed the implementation plan, which contemplates both source control and advanced treatment options. He then responded to comments from stakeholders, including the cost of implementation. He concluded that the TMDL provides a balanced approach to addressing a long-standing problem, with time allotted for studies to address uncertainty, potential modifications, and design and construction of treatment systems, if needed. He then stated that the one remaining issue would be the correctness of the 100 mg/l standard but that it was not appropriate to discuss the limit at this time.

Heather Mirand, representing the City of Santa Clarita, thanked the Board for changes made to the TMDL, but had remaining concerns about the level of Chloride needed to protect agricultural beneficial uses.

Vicki Conway, CSDLAC, presented background on the facilities, the historic levels of chloride in their effluent, and the sources of chloride. She stated that one source of chloride was the water supply itself, over which CSDLAC has no control, and another source was the use of self regenerating water softeners, over which they have limited control. She stated that a 1997 prohibition of self regenerating water softeners was overturned and that source control efforts would not be enough to achieve compliance with the 100 mg/l standard. She requested interim limits of 230 mg/l, higher waste load allocations during drought, and contingencies for regulatory delays.

Mark Subottin, Newhall Land and Farming Company, spoke against the 100 mg/L standard.

Matthew Freeman, Camulos Ranch Company, Piru, stated that surface water diversion is an integral part of their agricultural operations and he was therefore concerned about the chloride issue.

Darren Nelson, president of Fruit Growers association, expressed concern for possible changes in chloride in the Santa Clara River and its effect on crops.

Ron Bottorff, Friends of the Santa Clara River, supported the TMDL and the protection of agricultural beneficial uses.

Steve Bachman, Groundwater manager, United Water conservation district, spoke in favor of the TMDL, but stated that the chloride issue was a groundwater as well as a surface water problem. He stated that the proposed limits would not protect groundwater from impairment.

Questions for Staff

Board member Nahai asked why the past interim limit of 143 mg/L, as set in previous Board orders, was increased to an interim limit of 200 mg/L for this TMDL.



Jon Bishop replied that the point of interim limits was to shield the dischargers from violations. He stated that the 143 limit was based on CSDLAC's testimony from December 2000, and the 200 limit is based on more recent analysis of the effluent conducted by staff.

Board member Nahai stated that it seemed the 100 mg/L standard was illusory and that the Board was really being asked to approve interim limits for 15 years, which he felt was a problem.

Chairperson Diamond asked if there were any successful cases of self-regenerating water softener control in Region 4.

Jon Bishop replied that there were no such control programs in Region 4.

Board member Nahai asked if any of the studies proposed in the TMDL address groundwater effects.

Deborah Smith replied that the assimilative capacity study was dependent on surface water-groundwater interaction.

Board member Cloke asked if the results of certain studies would be obtained too late to protect groundwater. She asked if it would be possible to shorten the studies.

Jon Bishop replied that it was not possible to shorten the studies but that the Board could propose a Basin Plan amendment to further protect groundwater at any time; they would not need a specific reopener in the TMDL.

Board member McDonald asked how many dischargers were in the TMDL and how many years of analysis were used in developing the TMDL.

Jon Bishop replied that the two POTWs operated by CSDLAC provided the vast majority of water to the creek. He added that staff used data from 1971 to 2000 in their analysis.

Board member Nahai said that he still wanted justification of the 200 mg/L interim limit.

Jon Bishop replied that they could have the interim limit expire at the same time as the mandatory reopener. He disagreed with the chart from the United Water Conservation District that said that the interim limit was set above the highest historic performance levels for CSDLAC.

Deborah Smith added that the reason 143 was changed to 200 was either because staff misestimated two years ago or water quality has deteriorated since then.



Board member Cloke asked why LA County Sanitation District did not start buy-back and rebate programs two years ago.

Margaret Nellor, CSDLAC, replied that the reason a program was not started sooner was that the softener sellers would not provide information.

Chairperson Diamond asked if LA County Sanitation District had a plan for these types of programs.

Margaret Nellor replied that they were working with the City of Santa Clarita in conjunction with other outreach activities. She stated that people were not willing to give up self-regenerating systems because that they did not like the alternative canister systems.

The Board discussed the interim limits and the possibility of requiring a study deadline of 2 ½ years with reports from CSDLAC every six months and a mandatory reopener in four years.

There was a motion to adopt the TMDL with a change requiring an evaluation of the agricultural water supply two years after the effective date of the TMDL, a study on groundwater/surface water interactions two years after that, interim limits that would expire after 2 ½ years, and a mandatory reopener in 4 years.

MOTION: By Chairperson Diamond, seconded by Board Member Nahai, and approved on a voice vote. No votes in opposition.

Adjournment of Current Meeting

The meeting adjourned at 6 pm. The next regular meeting is scheduled for November 14, 2002, at the City of Los Angeles Public Works, 200 North Spring Street at 9:00 a.m.

Minutes adopted at the _____ Regular Board meeting submitted/amended.

Written and submitted by: _____.

